IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 424 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

JAGDISH MAGANLAL THAKOR

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 424 of 1992

MR DEEPAK M SHAH for Petitioner No. 1

NOTICE SERVED for Petitioner No. 1

Mr K P Raval, APP for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE D.P.BUCH

Date of decision: 21/12/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

The appellant-original accused no.1 has preferred this appeal before this Court under section 374 of Criminal Procedure Code, 1973 challenging the judgment and conviction order recording against him by the learned Addl.City Sessions Judge of City Sessions Court at Ahmedabad City on 29th April, 1992 in Sessions Case No.216/91 convicting the appellant for offence punishable under section 302 of IPC and sentencing him to suffer R.I. for life. The appellant was further directed to pay fine Rs.500/and was further directed to suffer R.I. for one month in default of payment of fine. Facts of the case of the prosecution may be briefly stated as follows:

2. The deceased was the wife of the present appellant. Accused No.2 and 3 are the parents of the present appellant. According to the case of the prosecution, PW 2-Dadamben Mangaji, Exh.13 was the mother of the deceased. It is the case of this witness that the appellant doubted the character of the deceased and he used to frequently beat her. That the appellant also did not permit the deceased to go to the parents. That he also used to take liquor very often. That accused no.2 and 3, parents of the appellant also ill-treated the deceased. On the above said set of facts, it has been alleged against the present appellant that on 25.3.1991 at about 14.30 hours, the present appellant set the body of the deceased Ushaben on fire after pouring kerosene on her person. With the result, deceased Ushaben died on account of burn injuries sustained by her. It is also alleged that the present appellant abused the deceased at that point of time and there was cruel treatment at the hands of the appellant as well the parents of the appellant i.e. accused no.2 and 3. Therefore, the appellant as well as original accused no.2 and 3 were charged for having committed offence punishable under section 302, 498-A read with section 34 of IPC. The deceased was taken to hospital where she was treated medically and despite the treatment given to her, the deceased died in the hospital on account of burn injuries sustained by her. Post mortem was carried out. In the meantime after the deceased died in the hospital and her dying declaration was recorded. Even the present appellant was also examined by the Doctor and he was treated for the injuries sustained by him. The FIR of the deceased was also recorded in the hospital, after recording her dying declaration by the Executive Magistrate. The deceased died in the hospital on

28.3.1991 at 5.10 p.m. Therefore, offence punishable under section 302 was registered against the appellant as well as against accused no.2 and 3. The Investigating Officer carried out investigation and recorded statements of witnesses. Panchnama was drawn with respect to the place of offence. The materials were collected from the place of offence. Burnt parts of clothes of the deceased were also seized. Reports were collected from the Forensic Science Laboratory. After conclusion of the investigation the Investigating Officer found that the appellants as well as accused No.2 and 3 committed the offence. Therefore, charge sheet was filed against the appellant as well as accused No.2 and 3 for the aforesaid offence. The learned Metropolitan Magistrate found that the offence under section 302 of IPC levelled against the appellant as well as against accused No.2 and 3 was exclusively triable by the Court of Sessions and, therefore, he committed the case against the appellant as well as accused No.2 and 3 to the Court of Sessions.

3. There the case was registered as Sessions Case No. 216/91. Copies of police investigation papers were supplied to the appellant as well as to the other two accused persons. Charge as above was framed and read out to the appellant and to the other accused persons. They pleaded not guilty to the said charges and, therefore, the learned Addl.City Sessions Judge proceeded to record evidence against the appellants and other accused persons. After the conclusion of the evidence on record, learned Addl.City.Sessions Judge recorded further statements of accused persons under section 313 of Cr.P.C. They were provided with an opportunity to explain the evidence against them. The learned Judge also heard the arguments advanced before him by the learned Advocate for the parties. On appreciation of the evidence and arguments, the learned Addl.City Sessions Judge found that the present appellant was guilty of offence punishable under section 302 of IPC and, therefore, the learned Judge was pleased to convict him for the said offence and was also pleased to sentence him to suffer R.I. for life. At the same time, the learned Judge found that nothing against the other two accused persons was proved and, therefore, he was pleased to acquit the two accused persons i.e. accused No.2 and 3.

4. Feeling aggrieved by the said judgment and conviction order, the appellant has preferred this appeal under section 372 of the Code before this Court. It has been mainly contended here that though this was a case of circumstantial evidence, the learned trial Judge has not properly appreciated the said position. That the learned

trial Judge has not considered the fact that the present appellant had taken his wife to the hospital. It is further contended that proper medical treatment was not extended to the deceased which resulted in her death. It is further contended that the learned trial Judge has omitted to consider the statement given by the deceased to the Doctor Anilbhai saying that she had suffered burn injuries while preparing tea at her residence and yet the learned trial Judge has not appreciated the position. That on the whole, there was no link connecting the appellant with the crime and, therefore, the learned trial Judge ought to have acquitted the present appellant at least by extending benefit of doubt. Therefore, the judgment and conviction order passed against the appellant are illegal and erroneous and deserve to be set aside. It is therefore, contended that the present appeal be allowed, the judgment and conviction order of the learned Addl.City Sessions Judge against the appellant be quashed and set aside and the appellant be acquitted of the charges levelled against him and he be set at liberty forthwith.

5. On receiving the appeal, it was ordered to be admitted and the bail was refused. When the matter was listed for hearing the appeal was argued on behalf of the appellant by Mr Deepak M Shah. In fact he has argued the matter at great length taking so many points for convincing the court that the present appellant was not the real culprit and he has not committed the offence in question. However, his efforts appear to be unsuccessful as he was not able to convince or point out that the offence in question is not proved to have been committed by the present appellant.

6. In fact, learned Advocate for the appellant as well as the learned APP Mr K P Raval both have taken us through the evidence both oral and documentary and they have also taken us through the reasonings recorded by the learned Judge during the course of his judgement. However, even on going through the oral and documentary evidence on record and even on going through the reasonings and findings of the learned Sessions Judge, we are of the opinion that by and large the learned Addl.City Sessions Judge has not committed any error in convicting the appellant for the offence in question. We are in general agreement with the reasonings and findings recorded by the learned Judge and, therefore, it is not very much necessary to discuss the evidence at length in accordance with the decision reported in the case of State V. Mansukhlal, reported in 1993(2) GLH 849.

7. At the same time, Mr Deepak M Shah, learned Advocate appearing for the appellant has argued the matter at great length and he has raised certain points and, therefore, we discuss those points in a brief manner to complete the judgment with a view to see that full justice is done to the appellant.

8. It is an admitted position that no witness was present at the time when the offence was committed. The offence was committed in the house in which the appellant was staying with the deceased. Original accused No.2 and 3, parents of the appellant were staying separately. There is no dispute about the same. Therefore, there is no direct evidence and there is no eye witness to the occurrence of the offence in question. In other words, the matter has solely stood on circumstantial evidence supported by dying decision of Ushaben recorded by the Executive Magistrate as well as dying declaration made by her to her relatives.

9. If we turn to the evidence on record, it can be gathered that the prosecution has examined the following witnesses:

(i) PW 1 Dr.Deshmukh Exh.6 with post mortem note - Exh.7

(ii) PW 2 Dadamben Mangaji, mother of deceased Ushaben Exh. 13

(iii) PW 3 Jethanand Narandas Exh.14, Panch witness who has turned hostile

(iv) Executive Magistrate Chavda, who has recorded dying declaration of the deceased - Exhs. 19 and 21 respectively

(v) Hansaben Ashok kumar, Sister of deceased=Exh.22

(vi) Dr. R B Shah Exh.23

(vii) Dr. Harilal Panchal Exh.27

(viii) Dr. Sonalben Exh.31

(ix) Dr.Anilbhai Amin - Exh.33

(x) Police Inspector Sharma - Exh.37

(xi) PSI Jashvantsinh - Exh.49

10. Now so far as the fact of death of the deceased is concerned, there was absolutely no dispute, even during the course of lengthy argument of Mr Deepak Shah, learned Advocate for the appellant. Even otherwise post mortem note at Exh.6 by Dr.Deshmukh Exh.6 clearly proves the fact of homicidal death of deceased Ushaben. The post mortem note has been produced at exh.7. The p.m. note was carried out on 29.3.1991. It shows that there were extensive burn injuries on the face, chest and upon upper and lower limbs of the deceased. Even burn injuries were there on legs and thighs of the person of the deceased. Doctor has testified that these injuries were anti mortem and they were sufficient in the ordinary course of nature to cause death of the deceased. Even Dr.Sonalben at Exh.31 and Dr.Anilbhai Amin at Ex.33 had also testified that when the patient was brought to the hospital on 25.3.1991, her condition was not good. In fact the physical condition went down gradually leading to her death. These facts, if read collectively, will lead to hold that the deceased had died on account of burn injuries sustained by her on 25.3.1991. Even otherwise, there is further evidence of Dadamben at Exh.13 - mother of the deceased and Hansaben at Exh.22, sister of the deceased. They have also testified that the deceased had burn injuries on her person. Suffice it to say that there was ample material before the trial court that the deceased died a homicidal death on account of burn injuries sustained by her on her body on 25.3.1991 when she was at her residence. Even panchnama of the place of offence indicates as to how the offence would have taken place at the residence of the deceased at about 2.30 p.m. on 25.3.2001. This also supports the case of the prosecution. The deceased sustained injuries on 25.3.1991 at 14.30 hours. Therefore, the fact of homicidal death of the deceased has become almost an admitted position.

11. Now so far as the evidence on the point of commission of the offence is concerned, there is evidence of Mr Chavda, working as Executive Magistrate, who has recorded the dying declaration of the deceased at 9.30 p.m. on 25.3.1991. The witness has been examined by the prosecution at Exh.19. He has stated that he was working as Executive Magistrate and he had received a police yadi for recording dying declaration of the deceased. He has produced the said police yadi during the course of his evidence at Exh.20. Then he has said that he proceeded to the Civil Hospital and had gone to ward E-3 where the deceased was admitted. He has deposed that he enquired about the physical condition of the deceased. That

Doctor had told that the deceased was in conscious state and, therefore, an endorsement was obtained from the said Doctor saying that the deceased was conscious. That thereafter, he proceeded to record the dying declaration of the deceased. That before starting the said process he had removed all the persons out of the ward. He proceeded with the recording of dying declaration of the deceased. The same is at Exh.21. During the course of dying declaration, the deceased has stated that the incident took place at 14.30 hours on 25.3.1991 at her residence. At that time she had put on chicken saree, polyester blouse and cotton petticoat. She has also stated that the present appellant used to beat her since last about four years. That the appellant was gambling also. That the appellant also used to give abuse to her. That on account of this situation, she had gone to her parents' place for 10 to 15 occasions during a span of four years' married life. That even on the last occasion, she had stayed at her parents' place for about 8 months.

12. With respect to the event in question, she has stated to the Executive Magistrate Mr Chavda that on that date, the appellant had consumed liquor when he arrived at the house. That he abused the deceased, called her prostitute and told that she was kept of someone else. That thereafter the appellant had kicked at her abdomen and had also caught her heirs and hit her and told her that he did not want her. That thereafter, the appellant sprinkled kerosene on her person and set her on fire by a burning match stick. That thereafter, the clothes put on by her caught fire and she sustained burn injuries on her face, on her chest and on both upper and lower limbs, legs and on her thighs and buttocks. Therefore, according to her, she sustained extensive burn injuries almost on the entire body. That there was no other reason for receiving the said burn injuries. She has further stated that original accused No.2 and 3 Maganlal and Menaben respectively also used to make allegations against her to the appellant. It was then put to her as to whether she had committed or attempted to commit suicide. The reply given by her was in negative. It was put to her as to the cause of burn injuries to her, the reply was that the appellant had sprinkled kerosene on her person and had set her on fire. Another question put to her was as to whether any physical or mental torture was extended to her, in reply she replied 'yes'. She said that the appellant as well as original accused no.2 and 3 used to extend physical and mental torture to her. She was further put a question as to what was the marital life, it was replied as four years. Thereafter, witness

has also signed the said dying declaration and it was read over to the deponent and was admitted. According to the case of the Executive Magistrate, signature of the deceased was obtained and the dying declaration was produced at Exh.21.

13. It has been strongly contended here that the physical condition of deceased Ushaben was so bad that she was unable to sign dying declaration and, therefore, the entire evidence given by the learned Executive Magistrate should be rejected, since he has stated that he had obtained signature of the deceased and the deceased was unable to sign. There is no material on record to show that the deceased was unable to sign the dying declaration. Moreover, the learned Executive Magistrate had no reason to obtain signature from somebody else on the dying declaration of the deceased. It is a routine practice that the Executive Magistrate would obtain thumb mark of the deponent on dying declarations in cases in which the deponents may not be able to put their signatures even though they may be literate or educated. In some cases, it is not possible to obtain even thumb marks of the deponent because they might have been burnt. In that event, the Executive Magistrate would make a note that the deponent was unable to sign and it was not possible to obtain his thumb mark. Therefore, when signature of the deceased had been obtained right below the said dying declaration Exh. 21, it cannot be said that this signature has not been put in the said dying declaration by the deceased. It is also contended by the learned Advocate for the appellant that the deceased is shown to have signed the FIR. The FIR is normally required to be signed by the informant and accordingly the Police Officer recording the FIR of the deceased obtained signature of the deceased in the said FIR. Therefore, nothing illegal or wrong is shown to have been committed when the FIR as well as the dying declaration both were found under the signature of the deceased. Even the Police Officer has also not stated that the deceased was unable to sign the FIR. The Doctor has testified that the deceased was in sound mental condition. Necessary endorsements have been made by the Doctor right below the relevant documents at the relevant time to show that the deceased was conscious at the time when the recording of dying declaration was commenced and at the time at which it was concluded. These endorsements clearly show that the deceased was conscious and was able to know the questions and to answer the questions during the time when the dying declaration was recorded.

14. The facts recorded in the dying declaration at exh.21 clearly supports and corroborates the FIR given by her. Since the deceased was almost on a death bed, the FIR given by her to the police officer would amount to her dying declaration. Therefore, there are two consistent dying declarations given by the deceased soon after receiving the injuries and soon after she was admitted in the hospital. Considering the consistency in these two dying declarations, it is not possible to say that the deceased was not in proper physical and mental condition to make a statement before the Executive Magistrate and before the Police Officer.

15. Mr Deepak M Shah, learned Advocate arguing the matter on behalf of the appellant has further argued that the facts stated in the dying declaration Exh.21 recorded by the Executive Magistrate and the facts stated in the FIR recorded by the Police Officer are almost identical. Now when the facts are very brief showing only that the deceased used to beat her and used to ill-treat her, the only say is that the appellant was in the habit of taking liquor, then these are the brief facts stated in the dying declaration at Exh.21 as well as in FIR Exh.50. considering the said statement of facts, it is not possible to hold that someone else has given those details to the Executive Magistrate as well as to the Police Officer, in the dying declaration as well as in the FIR. The Executive Magistrate and the Police Officer concerned had absolutely no reason to record those facts at the instance of someone in the dying declaration and FIR. No allegation has been made against them. They did not have any grudge against the present appellant. They were not shown to be interested in favour of the deceased and against the appellant. They are both totally neutral Government Officers and there is absolutely no reason to discard their testimony. Therefore, simply because the facts stated in the FIR and in the dying declaration are similar, it cannot be said that they are not genuine or that they are not trustworthy.

16. The aforesaid aspects of dying declaration of the deceased recorded by the Executive Magistrate get further corroboration from the evidence of at least two witnesses PW 2 Dadamben Exh.13 and PW 5 Hansaben Exh.22, the mother and the sister of the deceased respectively. They both have said that the appellant used to ill-treat the deceased and now on 25.3.1991 at 14.30 hours, he set her on fire. The version given by these two witnesses are almost similar and identical and they are very consistent with one another. The evidence given by these two witnesses clearly corroborated the statement of fact made

by the deceased before the Executive Magistrate in her dying declaration as well as before the Police Officer in FIR. In all there are four statements given by the deceased to four different persons. They are all very consistent and they are all corroborating one another. Therefore, there is no reason to discard the said statement made by the deceased to these two different persons.

17. We are conscious of the fact that PW 2 Dadamben and PW 5 Hansaben, Exhs 13 and 22 respectively are closely related to the deceased and, therefore, they would have some interest in favour of the deceased. Nevertheless, the evidence given by them get fully corroborated by the evidence of dying declaration and the FIR supported by the oral evidence of the Executive Magistrate and the Police Officer who had recorded the dying declaration and the FIR. Considering the corroboration received by each of the aforesaid piece of evidence, there is absolutely no reason to discard the evidence of those witnesses. Once their evidence is accepted, it is very clear that the deceased had made consistent statements in the form of dying declaration to Dadamben and Hansaben, to the Executive Magistrate and the Police Officer to the effect that the appellant used to ill-treat the deceased and that the appellant had set the body of the deceased on fire at 14.30 hours on 25.3.1991. In that view of the matter, simply because Dadamben and Hansaben are closely related to the deceased, it would not be a ground for rejecting their evidence.

18. It is then contended that there is material to show that the deceased had made one more dying declaration before the Doctor to the effect that she had received extensive burn injuries at the time when she was preparing tea. This can be gathered from page no.309. It seems to be a statement recorded by Dr. Anilbhai at Exh.33. It is required to be seen that Dr.Sonalben at Exh.31 has stated that this endorsement containing the so called statement of the deceased was made in the handwriting of Dr.Anilbhai Amin at Exh.33, meaning thereby that the said statement was shown to have been made by the deceased to Dr.Anilbhai at Exh.33. Dr. Sonalben at Exh.31 never says that the said statement was made by the deceased to her or in her presence. Therefore, the fact of the statement said to have been made by the deceased has not been proved during the course of the evidence of Dr.Sonalben. It is not her case that the said statement was made in her presence. It is not her case that the endorsement made by Dr.

Anilbhai at Exh.33 was made in her presence. She simply identified the handwriting of Dr.Anilbhai in the said statement at page 309.

19. Therefore, we will be required to examine the evidence of Dr.Anilbhai at Exh.33. He has been examined by the prosecution but surprisingly, learned Advocate for the present appellant before the trial court did not put any question to Dr.Anilbhai at Exh.33 with respect to the said statement said to have been made by the deceased to him in the hospital. Therefore, it is not proved on record that the deceased did make a statement before Dr.Anilbhai at Exh.33 to the effect that she was preparing tea at 14.30 hours on 25.3.1991 and at that time she had received accidental burn injuries.

20. Surprisingly we were not shown any reference to the alleged dying declaration said to have been made to Dr. Anilbhai by deceased Ushaben in the judgment of the judgment of the learned trial Judge.

21. On enquiry, the learned Advocate for the appellant has stated that the learned trial Judge has not dealt with the issue of the alleged dying declaration said to have been made by the deceased Ushaben to Dr. Anilbhai. Thereafter, learned Advocate for the appellant took us through the notes of arguments made by the learned Judge. However, he was not able to point out to us from the said notes of arguments, that this point was advanced by the learned advocate for the present appellant before the trial court while arguing the matter. This would clearly indicate that the appellant did not at all depend upon the so-called dying declaration of the deceased said to have been made to Dr. Anilbhai. It would lead us to infer that,

(a) The defence did not prove it

(b) The defence did not desire to prove it

(c) The defence was aware of the fact at the stage of argument that the said dying declaration was not proved by the defence.

(d) The defence may have avoided to prove it in order to avoid a possible proof of the fact that the accused mother-in-law of the deceased was present when the said so-called dying declaration was made, meaning further that it could be shown to have been made in the presence of her mother-in-law, accused no.3 and under her

influence also. This could show that this alleged dying declaration was not made by the deceased voluntarily with free will without being influenced by anything on the earth. The fact that the deceased was brought to hospital by accused no.3 is not in dispute.

22. Therefore, on these considerations also, the said so-called dying declaration of the deceased is required to be overlooked as not proved and not shown to have been made voluntarily by the deceased.

23. On the other hand, it transpires that original accused No.3 had taken the deceased to the hospital. Even learned Advocate for the appellant also agrees with the said situation. It may be that the said accused was present, when the statement was recorded. We are of the opinion that the Doctor could have said that this statement was made at the instance of accused No.3 or at least this statement was made when accused no.3 was present. Naturally, the deceased was having extensive burn injuries and she could be under the influence of her parents-in-law when she was brought to the hospital. Therefore, even if this statement was proved, ita could not be said to have been made by the deceased under a free-will. Any way, the statement has not been proved by the appellant before the trial court.

24. It is to be seen that the accused were being defended before the trial court by a very Senior Advocate late Mr Vivek Barot, who is said to be exclusively and substantively practising on criminal side. Therefore, he would not have missed an opportunity to prove the said statement, if the statement was really, genuinely and bonafidely made to the Doctor and if the statement was really made by the deceased voluntarily. Since no question has been put to the Doctor at Exh.33 by the learned Advocate for the appellant before the trial court, it is very clear that there is no evidence on record to show that the deceased made statement to Dr. Anilbhai at Exh.33 that the deceased sustained accidental injuries.

25. It is further contended that there is evidence on record to show that some kerosene was still found in the stove after the incident in question. Learned Advocate for the appellant has argued that when the kerosene was sprinkled on the person of the deceased for setting her on fire then no kerosene would have been left out in the stove. Now it would depend upon the capacity of the stove and the storage of kerosene in it. It would also

depend upon how much kerosene was sprinkled on the person of the deceased by the appellant before setting her on fire. The entire quantity of the kerosene might not have been sprinkled on the person of the deceased by the appellant before setting her on fire. Therefore, some quantity of kerosene would still be found in the stove when the panchnama was prepared. Therefore, this fact would not lead to any adverse inference against the prosecution.

26. It is then argued by the learned advocate for the appellant that as per the say of the deceased in the dying declaration as well as in the FIR that the appellant had consumed liquor when she was set on fire by the appellant. Mr Deepak M Shah, learned Advocate has argued that the evidence on record shows that the appellant was not found drunk as his eyes pupil were not diluted and the appellant was not found under the influence of liquor. Mr Shah argues that Dadamben and Hansaben both have also said that the deceased has taken liquor at the time of committing the offence. He also argues that when the appellant was not found under the influence of alcohol, then, the entire story narrated in the evidence of Dadamben as well as Hansaben falls to the ground. He also argues that the statement of fact made by the deceased in her dying declaration as well as in the FIR also stands falsified by the fact that as per the medical evidence on record, the appellant was not under the influence of liquor.

27. For this purpose, we have to turn to the evidence of Dr. R B Shah at Exh.23. It is true that the witness has deposed before the trial court at Exh.23 that the appellant was in conscious state, that his pupil were normal, that his breadth was not smelling of alcohol and he was not under the influence of alcohol but he was able to take care of himself. At the same time, it is required to be seen that the event took place on 25.3.1991 at 14.30 hours. Doctor at Exh.23 had examined the appellant on 27.3.1991. Therefore, naturally the appellant would not be under the influence of alcohol on 27.3.1991, if he had not taken liquor on the date of being examined by Dr.Shah at Exh.23. Therefore, this fact does not help the defence to any extent.

28. It is then contended by Mr Deepak Shah that even the appellant also sustained injuries while trying to save the life of the deceased. The injuries on the person of the appellant are superficial as has been recorded by Dr. Shah. The Doctor has certified that in his certificate that the appellant had following injuries

on his person.

(i) Superficial burns on the tip of little finger of right hand.
(ii) small superficial burns on medial side of right foot.

This shows that the injuries were superficial in nature. In above view of the matter, it can be said that even while setting the deceased on fire, the appellant could have sustained these injuries. It, therefore, cannot be said that the appellant tried to save the deceased and sustained injuries in the said process.

29. It has also been argued and even at page 281 it has been recorded that the appellant sustained injuries while trying to save the deceased. This statement was made on 27.3.1991 i.e. two days after the incident in question. The appellant was interested in making such a statement which would amount to a statement in his own favour. Therefore, it is not useful to the appellant for pleading that the appellant was innocent. So if these arguments on the above points raised by the learned Advocate for the appellants are not accepted, it is very clear that the deceased had made consistent statements in the dying declaration before the Executive Magistrate, before the Police Officer as well as before her mother and sister.

30. Then an attempt was made to argue that the mother and the sister had met the deceased before her statement was recorded by the Executive Magistrate and before whom the FIR was recorded. Dadamben and Hansaben, both have said that they could reach upto the ward in which the deceased was admitted but both have categorically deposed before the trial court that they were not permitted to enter the ward till the dying declaration and the FIR were recorded. Therefore, there was no occasion or opportunity with these two witnesses to contact the deceased for the purpose of fabrication of the story against the appellant. On the contrary this evidence clearly indicates that the deceased had no occasion to meet her mother and sister before giving the dying declaration and before lodging the FIR. Therefore, the statement made in the dying declaration as well as in the FIR must be treated to be voluntary, natural and genuine and it must be held that they are recorded without any influence of any near relatives.

31. It has also been argued by Mr Deepak M Shah that some relatives of the deceased were with the deceased

before the Executive Magistrate entered the ward of the deceased for recording the dying declaration. It is not very clear as to who the persons were. When the deceased was brought to the hospital by her mother-in-law, some relatives from the family of the appellant might have accompanied the deceased and the mother-in-law to the hospital. Dadamben and Hansaben reached there very late and they were not allowed to enter the ward before recording of dying declaration and FIR. Therefore, no near relative was present with her before she had given dying declaration and before lodging the FIR. This also shows that the statement made in the dying declaration as well as in the FIR were quite genuine and voluntary and, therefore, this evidence is reliable and trustworthy. The statements made in the dying declaration at different places get full corroboration from the medical evidence including the evidence of Dr. Anilbhai and the evidence of post mortem note. They fully corroborate the statements made by the deceased as aforesaid. Therefore, it is not possible for this court to differ from the view taken by the learned Addl.City Sessions Judge for holding that the appellant himself had set the deceased on fire with intention to commit her murder.

32. It is required to be noted that even according to the evidence of Jaswantsinh Surela at Exh.49, he had gone to the deceased for recording her FIR. Even he was prevented from entering the ward since treatment of the deceased was going on. This shows that the Doctors had taken full precaution and care in the matter. It also shows that even the police officer was not permitted to enter the ward when the treatment was on. When the police officer was not permitted to enter the ward, naturally there would be no other person present in the said ward when the dying declaration and FIR was recorded. The police officer had further stated that, in the meantime, the Executive Magistrate arrived and recorded the dying declaration of the deceased and thereafter the FIR was recorded. As said above, the statements made in the dying declaration and FIR are quite consistent and there is evidence on record to show that the deceased was conscious and therefore, she was able to make the statements. Therefore, in our view, the learned Addl.City Sessions Judge was perfectly right in relying upon the aforesaid dying declarations made by the deceased before different persons at different point of time. It is well settled that dying declarations can be made basis for convicting an accused person. Here it is not a matter of a single or solitary dying declaration. There are at least four dying declarations made by the

deceased before four different persons at for different time i.e. before the Executive Magistrate, Police Officer, Dadamben and Hansaben. They are all consistent and corroborating one another. Therefore, there is no reason to discard the statement of fact made in the dying declaration made by the deceased. At least when the dying declarations are found to be voluntary, trustworthy and true, they can be acted upon. When it is found that the dying declarations are quite trustworthy and dependable, the learned Addl.City Sessions Judge cannot be said to have committed any illegality in depending upon the dying declarations which were found to be voluntary, trustworthy and reliable and true. When they are corroborated by direct and circumstantial evidence, the same can be acted upon and they can be relied upon for the purpose of holding the appellant guilty for the offence in question.

33. It is to be seen that though the deceased had stated about the involvement of accused no.2 and 3 with respect to cruel treatment, the learned Judge found that the said statement of fact was not supported by any other material. This shows that the learned Judge was conscious of the fact that the dying declaration should not be blindly accepted. In above view of the matter, we are of a very clear opinion that the appellant and the appellant alone had committed the offence of killing his wife by setting her on fire on 25.3.1991 at 14.30 hours in his own house. When the offence was committed in the house of the appellant himself, there was no body staying in it except the appellant and the deceased and, therefore, it was not possible to have any eye witness to the event in question. Therefore, this case depends on circumstances and we find that each and every link of circumstance has been fully established and nothing is missing. Therefore, the learned Addl.City Sessions Judge was perfectly justified in holding the appellant guilty for the offence punishable under Section 302 of IPC. We agree with the reasoning and findings as well as the conclusion recorded by the learned Addl.City Sessions Judge. Therefore, we find that the appellant was rightly convicted for offence punishable under section 302 of IPC and, therefore, there is no merit in the present appeal and the same deserves to be dismissed.

In above view of the matter, this appeal is dismissed. The judgment and conviction order recorded by the learned Addl.City Sessions Judge, Ahmedabad City on 29.4.1992 in Sessions Case No.216/91 are confirmed.

Date:21.12.2001 [B J Shethna, J.]

[D P Buch, J.]

msp